

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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| A.P.S., INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 01-357-SLR |
| |) | |
| STANDARD MOTOR PRODUCTS, |) | |
| INC., |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM ORDER

At Wilmington this 22nd day of August, 2002, having reviewed defendant's motion for summary judgment and the papers filed in connection therewith;

IT IS ORDERED that said motion (D.I. 31) is granted in part and denied in part, for the reasons that follow:

1. **Standard of review.** A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter

the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

2. Factual background.

a. Plaintiff A.P.S., Inc. ("APS") is a Delaware corporation having its principal place of business in Houston, Texas. (D.I. 36 at A596)

b. Prior to February 1998, when APS filed a voluntary petition for reorganization relief under the Bankruptcy Code (11 U.S.C. §§ 101-1330), and until approximately February 1999, when it ceased doing business and began the process of winding up its business operations, APS was a leading warehouse distributor of automotive replacement products to the automotive aftermarket. (D.I. 53 at ¶ 3)

c. Defendant Standard Motor Products, Inc. ("Standard") is a New York corporation having its principal place of business in Long Island City, New York. (D.I. 36 at A596)

d. Standard is a leading manufacturer of automotive replacement parts that it distributes for resale to warehouse distributors and large auto parts retail chains under its own brand name and under private labels that it produces for key customers. (D.I. 54 at B156-57)

e. For nearly ten years prior to February 1998, APS purchased a variety of automotive products from Standard which APS resold (both wholesale and retail) throughout the United States. (D.I. 53 at ¶ 3) In 1997, APS purchased parts in

excess of \$70 million from Standard and was Standard's second largest customer. (D.I. 53 at ¶ 6)

f. The terms governing the parties' pre-bankruptcy relationship included the following:

1) APS purchased automotive products from Standard at a discount from Standard's published suggested jobber price sheets that generally ranged from 25% to 32.5%. (D.I. 53 at ¶ 12)

2) APS received a 2% prompt payment discount. (D.I. 53 at ¶ 13)

3) APS was allowed to participate in all purchase incentive (i.e., rebate) programs offered by Standard from time to time, including Standard's "Performance Incentive Program," "Total Incentive Program," and "Fuel Pump Incentive Program." Pursuant to these programs, APS received quarterly rebates from Standard based upon Standard's calculation of APS's qualifying net purchases of designated product lines during the prior quarter. (D.I. 53 at ¶ 14)

4) Standard agreed to accept and issue credits to APS for warranty returns. (D.I. 53 at ¶ 15-17)

5) APS received an annual advertising allowance. (D.I. 53 at ¶ 18)

g. As is typical in a Chapter 11 bankruptcy proceeding,

[i]n the hours and days that followed the petition date, [APS] participated in numerous discussions with APS' product vendors, including representatives of Standard, in an effort to reach agreement on the payment terms under which those vendors would be willing to sell to APS on a post-petition basis. Because APS' ability to fill its customers' orders depended upon daily shipments by its vendors, and because nearly all of APS' vendors had stopped shipping to APS upon learning that it had filed for bankruptcy, [APS'] discussions with Standard at this time were focused on reaching a payment arrangement that would restart the flow of product that APS so critically needed in order to supply its customers. From the outset of those discussions, Standard made clear that because of APS' pre-petition default, it was not willing to extend credit terms to APS, and that any sales would have to be on a pre-paid basis.

(D.I. 53 at ¶ 20)

h. The parties resumed their business relationship on "cash in advance payment terms," with APS receiving a 1.5% prompt payment discount. (D.I. 53 at ¶¶ 21-23)

i. The parties never reached agreement on terms regarding APS' participation in Standard's rebate, return, and promotional programs. (D.I. 53 at ¶¶ 24-25)

j. APS avers that:

1) APS was unable to purchase the Standard products post-petition from any vendor at prices comparable to Standard's pre-petition prices. (D.I. 53 at ¶ 26)

2) APS, therefore, "was forced to pay Standard's higher prices." (D.I. 53 at ¶ 26)

3) APS made the decision not to raise its prices to customers to reflect its higher costs. (D.I. 53 at ¶ 27)

4) The difference in price between what APS paid to Standard pre-petition and what it paid post-petition for Standard products totaled \$9.6 million.

k. APS avers that "many of those same pricing programs, all of which constituted substantial elements of the price paid by Standard's customers, were likewise extended to APS' competitors" (D.I. 53 at ¶ 12) APS further avers that Standard engaged in price discrimination by "reducing or eliminating those programs, terms and allowances," while allowing APS' competitors to "receive the same or better discounts, rebates, programs, terms and allowances in the post-petition period that they received in the pre-petition period." (D.I. 53 at ¶ 12)

l. In support of this charge, APS refers the court to approximately 13 documents concerning various of APS' competitors. (D.I. 52 at 17) Of these documents, 11 refer to pre-petition terms and 2 refer to post-petition terms. It is not clear from any of these documents (and APS offers no explanation whatsoever in this regard) whether the terms offered to APS' competitors are at all equivalent to APS' pre-petition terms. (D.I. 54 at B1-42) Therefore, there is no record evidence that

demonstrates what APS' competitors actually paid for equivalent Standard products pre-petition or post-petition. Instead, APS relies solely on its belief that all of its competitors had equivalent pricing programs pre-petition and continued to have such programs post-petition when APS lost its opportunity to participate in such programs.

3. Discussion.

a. **Robinson-Patman Act Claims.** Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. § 13(a) ("the Act"), makes it unlawful "to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition . . . in any line of commerce." The basic elements of a claim under the Act are: (1) discrimination in price;¹ (2) between two buyers of the same seller; (3) of commodities; (4) of like grade and quality; (5) where such discrimination may substantially injure competition in any line of commerce. The Act "does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable possibility that they 'may' have such

¹"For the purposes of the Robinson-Patman Act, price discrimination means nothing more than a difference in price charged to different purchasers or customers of the discriminating seller for products of like grade or quality." Stelwagon Mfg. Co. v. Tarmac Roofing Sys., Inc., 63 F.3d 1267, 1271 (3d Cir. 1995).

an effect." Federal Trade Comm'n v. Morton Salt Co., 334 U.S. 37, 46 (1948).

Demonstrating competitive injury as part of a prima facie case suffices to support injunctive relief and implicates further examination of a plaintiff's entitlement to treble damages under section 4 of the Clayton Act, 15 U.S.C. § 15. To recover treble damages a plaintiff must prove more than a violation of section 2(a); it must show the extent of actual injury attributable to the harm to competition.

J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990).

b. It is telling that APS has cited to no case in which the Act has been applied to a situation analogous to the one at bar, that is, where the plaintiff complains of price discrimination during a period in which it is doing business as a debtor in possession. Given the admissions by APS that no vendor must continue doing business with a customer post-petition and that convincing vendors to do just that is a critical undertaking at the initial stage of any retail Chapter 11, the court remains unconvinced that the Act does or should have any application at bar, where APS' competitors are not similarly situated to APS.

c. Even if the court were to assume the contrary, nevertheless, the court finds that APS has not demonstrated the existence of genuine issues of material fact regarding price discrimination. Aside from Mr. Popik's conclusory averment that APS' competitors benefitted from the same pricing programs as APS

and continued to benefit from the same even after APS was denied that participation post-petition, there is no way for the court to compare or quantify the required price differentials, either for purposes of establishing prima facie price discrimination or for establishing treble damages.² Therefore, the court grants defendant's motion on these claims.

d. **Breach of Warranty Claim.** Because of the parties' prior course of dealing, whereby APS was not required to establish the nonconformity of the returned goods, the court declines to grant Standard's motion for summary judgment in this regard.

e. **Breach of Contract Claim.** The court finds that there are genuine issues of material fact and that Standard is not entitled to entry of summary judgment as a matter of law concerning APS' contractual entitlement to post-petition rebates.

f. **Open Account Claim.** The court reserves judgment on this claim until a more thorough review of the evidence proffered by APS.

g. **Conversion and Turnover Claims.** Standard's motion for summary judgment is granted with respect to these claims, as APS did not offer any opposition in this regard.

(D.I. 52)

²Given the fact that APS has ceased all business operations, injunctive relief is no longer a relevant remedy.

IT IS FURTHER ORDERED that:

1. Plaintiff's motion to compel (D.I. 48) is denied.

2. Defendant's motion for sanctions and plaintiff's motion to defer briefing on sanctions (D.I. 60, 68) are denied.

3. Plaintiff's motions to strike the Doyle declaration and the expert testimony of John R. Umbeck (D.I. 51, 76) are denied as moot.

4. Defendant's motions in limine (D.I. 77) are granted in part (points I and II, as moot). The court reserves judgment on the remainder pending further discussion with counsel.

5. Plaintiff's motion for leave to file a surreply brief (D.I. 67) is denied as moot.

6. Plaintiff's motion for leave to file a second amended complaint (D.I. 12) is denied.

Sue L. Robinson
United States District Judge